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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91227887
Party	Plaintiff IMAX Corporation
Correspondence Address	CHRISTOPHER P BUSSERT KILPATRICK TOWNSEND & STOCKTON LLP 1100 PEACHTREE STREET SUITE 2800 ATLANTA, GA 30309 UNITED STATES cbussert@ktslaw.com, kteilhaber@ktslaw.com, tadmin@ktslaw.com, cbussert@kilpatricktownsend.com
Submission	Other Motions/Papers
Filer's Name	Christopher P. Bussert
Filer's e-mail	cbussert@ktslaw.com, kteilhaber@ktslaw.com, tadmin@ktslaw.com
Signature	/Christopher P. Bussert/
Date	09/15/2016
Attachments	OPPOSERS MOTION TO HAVE OPPOSERS NOTICE OF OPPOSITION AVERMENTS DEEMED ADMITTED.PDF(391117 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the matter of Application Serial No. 86/675,025; IMAXPLUS and Design; Published in the Official Gazette of January 26, 2016; TM 1805

IMAX CORPORATION,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91/227887
)	
Shenzhen Auto-Vox Technology)	
Co. Ltd.,)	
)	
Applicant.)	

**OPPOSER'S MOTION TO HAVE OPPOSER'S NOTICE
OF OPPOSITION AVERMENTS DEEMED ADMITTED**

Pursuant to Fed. R. Civ. P. 8(b)(6) and the Board's order dated August 30, 2016, Opposer hereby seeks to have the averments in its Notice of Opposition filed on May 11, 2016 deemed admitted for purposes of this proceeding.

Opposer filed its Notice of Opposition on May 11, 2016. Applicant was advised by the Board on May 16, 2016 of the relevant deadlines in this matter, including its time to file an Answer, which was set for June 25, 2016. When no Answer was timely filed by Applicant, the Board on July 5, 2016 issued a Notice of Default. In that Notice, Applicant was advised that it would be allowed until thirty (30) from the mailing date of that Notice (e.g., August 4, 2016) to show cause why judgment by default should not be entered against Applicant.

Applicant failed to respond to the Board's Notice of Default within the time outlined therein. Rather, on August 9, 2016, five (5) days after the expiration of the thirty (30) day period outlined in the Notice of Default, Applicant filed a document entitled "The Reasons

for Default”. Applicant’s document failed to provide any showing of good cause for its failure to file its original Answer timely or to respond timely to the Notice of Default as required by TBMP 312.03. Because Applicant failed (a) to file an Answer timely; (b) to respond to the Board’s July 5, 2016 Order; **and** (c) to provide good cause for setting aside the default, Opposer requested that the entry of default not be set aside and that a default judgment be entered in due course.

Despite Applicant’s clear failure to comply with the rules governing this proceeding and the Board’s Notice, the Board on August 30, 2016 issued an Order setting aside the default. However, the Board also cautioned Applicant that its August 9, 2016 submission did not constitute an adequate Answer to the Notice of Opposition under Fed. R. Civ. P. 8(b) and it instructed Applicant as follows:

The notice of opposition filed by Opposer herein consists of two introductory paragraphs and thirty-one (31) numbered paragraphs setting forth the basis of Opposer’s claim of damage. In accordance with Fed. R. Civ. P. 8(b), it is incumbent on Applicant to answer the notice of opposition **by specifically admitting or denying the allegations contained in each paragraph. If Applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.**

(emphasis on original).

Attached as Exhibit A is the Answer Applicant filed on September 13, 2016.

Because the time for filing an Answer compliant with the Board’s August 30, 2016 Order and Fed. R. Civ. P. 8(b) has expired, Opposer moves this Board for an Order holding that for

purposes of this proceeding all averments in Opposer's Notice of Opposition are deemed admitted as specified under Fed. R. Civ. P. 8(b)(6).

Dated: September 15, 2016

Respectfully submitted,

IMAX CORPORATION

By 

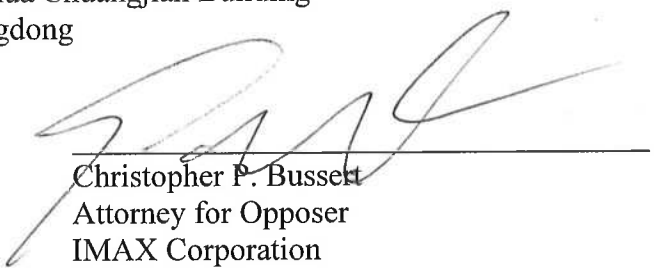
Christopher P. Bussert
KILPATRICK TOWNSEND & STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
Telephone: (404) 815-6500
Facsimile: (404) 815-6555
E-mail: cbussert@kilpatricktownsend.com

Attorneys for Opposer
IMAX Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S MOTION TO HAVE OPPOSER'S NOTICE OF OPPOSITION AVERMENTS DEEMED ADMITTED was served on Applicant's correspondent as identified in the correspondence address of record on September 15, 2016 via Air Mail to:

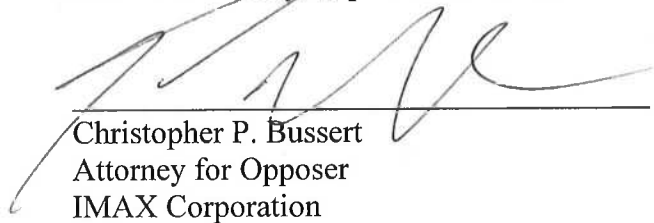
Rainbow
Shennan Road, Futian District
Room 811, Yaohua Chuangjian Building
Shenzhen, Guangdong
China



Christopher P. Bussert
Attorney for Opposer
IMAX Corporation

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing OPPOSER'S MOTION TO HAVE OPPOSER'S NOTICE OF OPPOSITION AVERMENTS DEEMED ADMITTED is being filed electronically with the PTO via ESTTA on this day, September 15, 2016.



Christopher P. Bussert
Attorney for Opposer
IMAX Corporation

Exhibit A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Application Serial No. : 86675025

Filed: Jun. 25, 2015

Published for Opposition on Jan. 26, 2016

Trademark: IMAXPLUS

Opposer: IMAX Corporation

Applicant: Shenzhen Auto-vox Technology Co. Ltd

Opposition No. 91227887

Answer to Notice of Opposition

The applicant, Shenzhen Auto-vox Technology Co. Ltd, is a limited company (Ltd.) legally organized under the laws of China, having an address of NO. 709, 7/F, Block 5, Jinfanghua Area, Xinhe St, Hebei Vil, Longgang Dist, Shenzhen, Guangdong, China.

Applicant filed a Motion for Relief from Entry of Default Judgment on August 9, 2016, presenting the causes why he failed to file an answer to the Opposition and respond to the Board's Notice of Default timely. Applicant's delay to the matters set forth above was not willful or in bad faith. On August 30, 2016, Applicant's motion to set aside default was GRANTED by the Board and the Board's July 5, 2016 notice of default was set aside. Applicant is allowed until September 19, 2016 to file and serve on counsel for Opposer an answer.

Grounds for defending:

1. Physically, Applicant's applied-for mark IMAXPLUS ends with "PLUS". It is with design and the colors red, orange, yellow, blue, and green were claimed as a feature of the mark. Opposer's marks end with many other words. They are visually different and easily

distinguishable.

2. Applicant's applied-for mark is IMAXPLUS with design for " Bite indicators; Bite sensors; Fishing tackle; Game equipment, namely, chips; Gaming devices, namely, gaming machines, slot machines, bingo machines, with or without video output; Mountaineering and rock climbing equipment, namely, climbing cams and anchors made of metal; Radio controlled model vehicles; Skateboards; Skis; Snowboards; Surf boards; Swim fins; Swimming flippers; Swimming jackets; Toy masks; Toy robots; Work-out gloves" in International Class 028. Opposer alleges that it has been, and is currently, using the IMAX mark in connection with a wide range of technology and services. Nevertheless, the goods/services its marks cover are Class U026, Class U038, Class 041, Class 009, Class 025, Class 028. Among all the goods/services covered by Opposer's IMAX Family of Marks, at least twelve marks are in class 41, for "Motion picture production and post production services, including remastering of films from one film format into another; Displaying Motion Picture Film and Operating Motion Picture Theatres; motion picture theater services featuring integrating large format, wide angle, low distortion, high resolution, high image stability cinematographic projection equipment and film, screen, theater design, seating and sound technology; movie theater services; and Providing fitness and exercise facilities" and other related terms. The public's awareness and recognition of Opposer's IMAX mark is, to a large extent, mainly about studio entertainment industry and the auxiliary products. The only term may be affected is "motion simulator rides" covered by Opposer's registered word mark IMAX in class 028. In view of the fact set forth above, it is obviously that no confusion will cause between Opposer's marks and Applicant's applied-for mark.

3. The international class of goods covered by Applicant's applied-for mark is 28. The nature of both parties' goods and/or services is not related. Opposer alleged that several of the categories of Applicant's goods were related to the goods and services Opposer provides and intends to provide. Applicant will remove the related goods Opposer provides. Thus the goods will be totally different. Consumers will not be confused because 1. Applicant and Opposer sell different goods; 2. the functions, the purposes, the channels of trade of their products are fundamentally different.

4. Applicant's applied-for mark has been used in commerce in connection with all the goods specified in its application since 2010. Applicant has also expended substantial amounts of money, time and effort in advertising and promoting its mark IMAXPLUS throughout the United States and other countries and the brand has gained very good reputation. Its products have a large number of devoted consumers.

Applicant therefore requests that the trademark IMAXPLUS is legal and valid, and that the Opposition against registration of the mark is void.

Dated September 13, 2016

Respectfully submitted
/Peng Xiaopan/
Duly authorized officer
Shennan Road, Futian District
Room 811, Yaohua Chuangjian Building
Shenzhen, Guangdong, China

CERTIFICATE OF SERVICE

I hereby certify that a courtesy copy of the foregoing ANSWER to NOTICE OF OPPOSITION

has been served via email on this day, Sept. 13, 2016, upon the following:

Christopher P. Bussert
ATTORNEY FOR OPPOSER
Phone: 404-815-6500
Email: cbussert@ktslaw.com,
kteilhaber@ktslaw.com,
tadmin@ktslaw.com

/Peng Xiaopan/
Peng Xiaopan
Duly authorized officer
Shenzhen Auto-vox Technology Co. Ltd

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing ANSWER TO NOTICE OF OPPOSITI-

ON is being filed electronically with the PTO via ESTTA on this day, Sept. 13, 2016.

/Peng Xiaopan/
Peng Xiaopan
Duly authorized officer
Shenzhen Auto-vox Technology Co. Ltd